



Board of Adjustment Case Report

City of Raleigh
Department of City Planning
One Exchange Plaza
Raleigh, NC 27601
(919) 996-2626
www.raleighnc.gov

Case File: A-80-15

Property Address: 0 E. Lane Street (PIN# 1704902245)

Property Owner: Heather Lee and Randall Craig Scott

Appellants: Separate neighboring property owners: Robert Gillen and Robert Willett

Nature of Case: An Appeal of Administrative Decision by the City of Raleigh Assistant Zoning Administrator regarding work undertaken on an alley driveway on a .02 acre parcel zoned Residential-10 and General Historic Overlay District that adjacent to the appellants' properties.



0 E. Lane Street – Location Map

To BOA: 10-12-15

Staff Coordinator: Eric S. Hodge, AICP

ZONING

DISTRICTS: Residential-10 and General Historic Overlay District

PERTINENT CODE SECTIONS EXCERPTED FOR EASE OF REFERENCE:

UDO Section 5.4.1 General Historic Overlay District

A. Applicability

This section applies to all individual Historic Landmarks and each General Historic Overlay District (-HOD-G) designated by the City Council.

B. Purpose and Objectives

1. The -HOD-G is intended to preserve the historic significance of properties that are formally designated by the City. Locally designated historic districts are areas which are deemed to be of special significance in terms of their history, prehistory, architecture, archeology or culture, and to possess integrity of design, setting, materials, feeling and association. The -HOD-G seeks to preserve the overall historic character of the district, as well as the key, character-defining details of each of the contributing resources, and to assure that new construction is compatible with this historic context.

2. The -HOD-G has the following objectives:

- a. To promote the preservation and continued use of individual properties and districts of historic significance;
- b. To preserve the integrity of historically significant resources;
- c. To support sustainability by reusing existing built resources; and
- d. To assure that new construction is compatible with the historic context of landmark properties and historic districts.

C. Certificate of Appropriateness Required

1. In addition to all other approval processes, within the -HOD-G and for any Historic Landmark, no portion of the exterior features of any building or other structure (including walls, fences, light fixtures, steps, pavement, path or any other appurtenant features), trees, or above ground utility structure nor any type of outdoor advertising sign, or portion of the designated interior features of a Historic Landmark is to be erected, altered, restored, demolished or moved unless and until after an application for a Certificate of Appropriateness as to the exterior features, or portion of the designated interior features of a Historic Landmark, has been submitted and approved.

2. A Certificate of Appropriateness shall be issued prior to any application for a building permit or other permit granted for the purpose of constructing, altering, moving or demolishing structures or appurtenant features being made, and shall be issued or denied, subject to such reasonable conditions as the Historic Development Commission may impose, according to such procedures as may be set forth elsewhere in this UDO or adopted by the Historic Development Commission.

3. A Certificate of Appropriateness shall be required for all activities specified in this section whether a building permit or other permit is otherwise required or not; except that no Certificate of Appropriateness shall be required for:

a. The ordinary maintenance or repair of any features that do not involve a change in:

i. Design;

ii. Material;

iii. Color; or

iv. Outer appearance.

b. The construction, reconstruction, alteration, restoration, moving or demolition of any feature which the Deputy Inspections Director certifies is required by the public safety because of an unsafe or dangerous condition.

c. In the event of equipment failure, accidental damage or natural occurrences (such as electrical storms, tornadoes, ice storms and the like), the ordinary maintenance or repair of:

i. Streets;

ii. Sidewalks;

iii. Pavement markings;

iv. Above-ground utility service lines; or

v. Street signs, traffic signs or replacement of streetlight fixtures.

4. All of the provisions of this section are applicable to construction, alteration, restoration, moving and demolition by the State of North Carolina, its political subdivisions, agencies, instrumentalities and public utilities.

5. Individual certificates of appropriateness for each change may be requested, or if the activity is of the same character and involves a number of objects, as is the case with utility pole replacement, a programmatic certificate of appropriateness may be requested.

D. Prohibited Activities

1. Prohibited activities within a -HOD-G or Historic Landmark include the following when conducted without an approved Certificate of Appropriateness:

a. The erection, alteration, changing, restoration, moving or demolition of:

i. Any entire building or structure;

ii. Any exterior features of a building or structure;

iii. Any site features (including walls, fences, light fixtures, steps, pavement, paths or any other appurtenant features);

iv. Trees; v. Any above-ground utility structure;

vi. Any type of outdoor advertising sign; or

vii. Any portion of the designated interior features of a Historic Landmark.

b. The demolition by neglect (Article 11.8. Demolition by Neglect of Historic Landmarks and Structures Within Historic Overlay Districts) of:

- i. Any contributing building or structure;
- ii. Any exterior features of a contributing building or structure;
- iii. Site features (including walls, fences, light fixtures, steps, pavement, paths or any other appurtenant features); or
- iv. Any contributing outdoor advertising sign.

2. The demolition of any entire building, site or structure within a pending -HOD-G or pending Historic Landmark is prohibited when conducted without an approved Certificate of Appropriateness:

a. Any demolition during the pending designation may be delayed for a period up to 180 days from the date of issuance (unless the Historic Development Commission votes to waive or shorten it) or until the City Council takes final action, whichever occurs first.

b. Should the City Council approve the designation prior to the expiration of the 180 day delay period, a new application for a certificate of appropriateness for demolition must then be filed; however, the maximum period of delay for such demolition certificate shall be reduced by the Historic Development Commission equal to the period of delay while the designation was pending.

E. Setbacks

1. The minimum and maximum setbacks within the -HOD-G and for Historic Landmarks shall be equal to the setbacks of typical well-related nearby buildings and structures in the overlay district, and equal with the character of the Historic Landmark, as set forth in the historic development standards below or as defined in the designation documents or nomination.

2. Where the setbacks or allowed encroachments of the underlying district conflict with these setback requirements, the setbacks of the historic development standards shall control.

F. Height

1. Buildings and structures shall be equal to the height of typical well-related nearby buildings and structures in the overlay district, and equal with the character of the Historic Landmark, as set forth in the historic development standards below or as defined in the designation documents or nomination.

2. Where the height regulations or allowed height encroachments of the underlying district conflict with these height requirements, the height requirements of the historic development standards shall control.

G. Signs

No sign shall be erected, altered, restored or moved except in compliance with a Certificate of Appropriateness.

H. Historic Development Standards

1. See documents entitled: "Design Guidelines for Raleigh Historic Districts," "The Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings," and "The Secretary of the Interior's Standards for the Treatment of Historic Properties and the Guidelines for the Treatment of Cultural Landscapes." These documents are incorporated by reference as authorized by N.C. Gen. Stat. §160A-76, are made a part of this UDO and are on file with Planning and Development. These documents contain architectural guidelines and design standards that will be applied in considering applications for Certificates of Appropriateness to ensure as far as possible that the exterior features of buildings, structures and their associated features located within a -HOD-G, and designated as a Historic

Landmark, remain in harmony with other buildings, structures and appurtenant features in the overlay district, and the character of the Historic Landmark.

2. The current edition of "The Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings" shall be the sole standards and guidelines used in reviewing applications submitted by the State of North Carolina for a Certificate of Appropriateness.

3. The issuance of a Certificate of Appropriateness shall not be prohibited in situations where, owing to special conditions affecting the structure (such as topography, availability of materials, and lot size) but not affecting the - HOD-G or Historic Landmarks generally, compliance with the historic development standards would cause an unusual and unnecessary hardship on the property owner beyond that which other property owners in the - HOD-G or of Historic Landmarks would meet.

Part 10 A Zoning Code: Sec. 10-2052. - HISTORIC OVERLAY DISTRICT.

(a)

Approval.

(1)

(1) *Site plans and plot plans.*

If the use requires a *site plan*, as set forth in [§10-2132.2](#), approval of a *site plan* is required by either the administrative staff, the Planning Commission, or the *City Council*; see [§10-2132.2\(b\)](#) and (c). If the use requires a *plot plan*, as set forth in [§10-2132.1](#), administrative approval is required.

(Ord. No. 1997-137-TC-153, §2, TC-18-96, 1-14-97)

(2)

(2) **Certificate of appropriateness.**

a.

Required.

In addition to all other approval processes, within the Historic Overlay District, and for any *Historic Landmark*, no portion of the *exterior features* of any *building* or other structure (including walls, fences, light fixtures, steps, pavement, path, or any other appurtenant features), trees, nor above ground utility structure nor any type of *outdoor advertising sign*, or portion of the designated interior features of a *Historic Landmark*, is to be erected, altered, restored, demolished, or moved unless and until after an application for a certificate of appropriateness as to the *exterior features*, or portion of the designated interior features of a *Historic Landmark*, has been submitted to and approved by the Historic Development Commission. A certificate of appropriateness *shall* be issued prior to any application for a building permit or other permit granted for the purpose of constructing, altering, moving or demolishing structures or appurtenant features being made, and *shall* be issued or denied, subject to such reasonable conditions as the Historic Development Commission *may* impose thereon, according to such procedures as *may* be set forth elsewhere in this section or adopted by the Historic Development Commission. A certificate of appropriateness *shall* be required for all activities specified in this section whether a building permit or other permit is otherwise required or not; except no certificate of appropriateness *shall* be required for:

1.

The ordinary maintenance or repair of any features which do not involve a change in design, material, color, or outer appearance thereof.

2.

The construction, reconstruction, alteration, restoration, moving, or demolition of any feature which the Director of Inspections or his designee *shall* certify is required by the public safety because of an unsafe or dangerous condition.

3.

The ordinary maintenance or repair of *streets*, sidewalks, pavement markings, above-ground *utility service* lines, *street* signs, traffic *signs* and/or replacement of streetlight fixtures in the event of equipment failure, accidental damage or natural occurrences such as electrical storms, tornadoes, ice storms and the like.

All of the provisions of [§10-2052 et seq.](#) are hereby made applicable to construction, alteration, restoration, moving, and demolition by *the State* of North Carolina, its political subdivisions, agencies, instrumentalities, and public utilities. Individual certificates of appropriateness for each change *may* be requested or if the activity is of the same character and involves a number of objects, as in the case of utility pole replacement, a programmatic certificate of appropriateness can be requested.

State law reference: G.S. 160A-400.9(f)

b.

Application.

All applications for a certificate of appropriateness are to be filed in the office of either the Planning Department or of the Historic Development Commission. The application *shall* be filed no later than ten (10) working days - excluding the meeting date - prior to the next regularly scheduled meeting of the Historic Development Commission on forms provided by the *City*, and it must be accompanied by sketches, drawings, photographs, specifications, descriptions, and other information of sufficient detail to clearly show the proposed exterior alterations, alterations to designated interior features of *Historic Landmarks*, additions, changes or new construction. The names and mailing addresses of *property owners* filing and/or subject to the application and the addresses of *property* within one hundred (100) feet on all sides of the *property* which is the subject of the application must also be filed. No application which is unaccompanied by the aforementioned information will be accepted.

c.

Action on application for certificate of appropriateness.

1.

Deadline.

Applications for certificates of appropriateness *shall* be acted upon within ninety (90) days after the complete application is filed, otherwise the application *shall* be deemed to be approved and a certificate of appropriateness *shall* be issued; provided however, that the Commission *may* take the matter under advisement for a total period of up to one hundred eighty (180) days to receive additional evidence or memoranda of authority requested by the Commission for its consideration. Nothing herein *shall* prohibit an

extension of time where mutual consent is given. The *City* staff *may* advise the applicant and make recommendations in regard to appropriateness.

2.

Minor works.

Upon receipt of a completed application, the Planning Director or his designee *may* issue a certificate of appropriateness for minor works. Minor works are defined as those changes that do not involve substantial alterations, additions, or removals that could impair the integrity of the Landmark, *property* and/or the Overlay District as a whole. Such minor works *shall* be limited to those listed in the "**Bylaws and Rules of Procedure**" of the Historic Development Commission. Applications for minor works *shall* be reviewed by the Planning Director or his designee according to the detailed development standards of [§10-2052\(e\)\(4\)](#). All certificates of appropriateness for minor works issued by an administrative official *shall* be forwarded to the Historic Development Commission, for its information, at its next regularly scheduled meeting. Failure to approve the requested minor work by the *City* staff *shall* in no way interfere with the applicant's right to be heard by the Historic Development Commission; in that, no application for a certificate of appropriateness *may* be denied without the formal action of the Historic Development Commission.

3.

Notice.

Whenever a hearing on the application is to be heard by the Commission, the Planning Department *shall* make a reasonable attempt to identify and notify by mail the *owners* of *property* within one hundred (100) feet on all sides of the *property* which is the subject of the pending application. The mailed notices are for the convenience of the *property* owners and occupants and any defect or their omission therein *shall* not impair the validity of issuing a certificate of appropriateness, or any action *following* therefrom. The Planning Department *shall* transmit the application for a certificate of appropriateness, together with the supporting material, to the review body for its consideration.

4.

Hearing.

Prior to the issuance or denial of a certificate of appropriateness by the Commission, the applicant and other *property* owners likely to be materially affected by the application *shall* be given an opportunity to be heard. All meetings of the Historic Development Commission *shall* be open to the public in accordance with the North Carolina open meetings law, General Statutes Chapter 143, Article 33B. Interior arrangement *shall* not be considered by the review body and no certificate of appropriateness is required for interior repairs or renovations, except for designated interior features of *Historic Landmarks*. The review body *shall* not refuse to issue a certificate of appropriateness except for the purpose of preventing the construction, reconstruction, alteration, restoration, moving, or demolition of *buildings*, structures,

appurtenant features, *outdoor advertising signs* or other significant features in the Historic Overlay District or for *Historic Landmarks*, which would be incongruous with the special character of the District and/or would be incongruous with the special character of the Landmark. The Commission *shall* render its decision in *written* form, including its reasons for issuing or denying the certificate and a summary of any citation to the evidence, testimony, studies, or other authority upon which it based its decision. When with the consent of all interested parties, the Historic Development Commission *may* hold a summary proceedings of a Certificate of Appropriateness. Such proceedings *shall* be a public meeting, and the Commission's decision *shall* be rendered in *written* form.

In all proceedings or public hearings before the Historic Development Commission with regard to an application for a certificate of appropriateness, the burden of producing substantial evidence or testimony is upon the applicant, and if the applicant fails to do so, the Commission *shall* deny the certificate.

Notwithstanding any other provisions of this Code, the Historic Development Commission *may* require additional evidence or memoranda of authority to be submitted and *may* take the matter under advisement until such evidence or memoranda have been submitted and considered up to the one hundred eighty (180) day limit established in subsection c.1. above. As part of its deliberation, the Commission *may* view the *premises* and seek the advice of the North Carolina Division of Archives and History or such other expert advice as it *may* deem necessary under the circumstances.

The Commission's action on the application *shall* be approval, approval with conditions, deferral, or denial.

5.

Demolition of *buildings*, structures, and sites.

i.

General.

An application for a certificate of appropriateness authorizing the demolition or destruction of a *building*, structure, or site within the district *may* not be denied except as provided in paragraph iii below. However, the authorization date of such a certificate *may* be delayed for a period of up to three-hundred sixty-five (365) days from the date of approval. The maximum period of delay authorized by this section *shall* be reduced by the Commission where it finds that the *owner* would suffer extreme hardship or be permanently deprived of all beneficial use of or return from such *property* by virtue of the delay. During such period of delay the Commission *may* negotiate with the *owner* and with any other parties in an effort to find a means of preserving the *building*, structure, or site. If the Commission finds that the *building*, structure, or site has no particular significance or value toward maintaining the character of the Overlay District, it *shall* waive all or part of such period and authorize earlier demolition or removal.

(Ord. No. 889-TC-381, TC-18-91, 12-8-91)

ii.

Pending *Historic Landmark* and Within a Pending Historic Overlay District.

If the Commission has voted to recommend designation of a *property* as a *Historic Landmark*, or an area as a Historic Overlay District, and final designation has not been made by the *City Council*, the demolition or destruction of any *building*, site, or structure proposed as a Landmark or located in the proposed District *may* be delayed by the Commission for a period of up to one hundred eighty (180) days or until the *City Council* takes final action on the designation, whichever occurs first. Should the *Council* approve the designation prior to the expiration of the one hundred eighty (180) day delay period, an application for a certificate of appropriateness for demolition must then be filed; however, the maximum period of authorization date delay for such demolition certificates *shall* be reduced by the Commission equal to the period of delay while the designation was pending.

Cross reference: No demolition permit *shall* be issued until expiration of period of delay, §10-6035.

iii.

Statewide significance.

An application for a certificate of appropriateness authorizing the demolition or destruction of a *building*, structure, or site determined by *the State* Historic Preservation *Officer* as having statewide significance as defined in the criteria of the National Register of Historic Places *may* be denied except where the Commission finds that the *owner* would suffer extreme hardship or be permanently deprived of all beneficial use or return by virtue of the denial.

6.

Compliance with other law.

Issuance of a certificate of appropriateness *shall* not relieve the applicant, contractor, tenant or *property owner* from obtaining any other permit required by this Code or any law.

Annotation: *A-S-P Associates v. City of Raleigh*, 298 N.C. 207, 230, 258 S.E. 2d 244 (1979). The police power encompasses the right to control the exterior appearance of private *property* when the object of such control is the preservation of *the state's* legally or historically significant structures.

d.

Appeals.

In any action granting or denying any certificate of appropriateness, an appeal by an aggrieved party *may* be taken to the Board of Adjustment. To perfect such an appeal, *written* notice of intent to appeal must be sent to the Historic Development Commission, postmarked within twenty (20) days *following* the decision, unless oral notice of appeal is made to the Commission during the meeting at which the decision is rendered. A completed "Application for Review of the Historic Development Commission's Decision Before the Raleigh Board of Adjustment" must then be filed with the Board of Adjustment

within sixty (60) days *following* the decision of the Commission. Appeals *shall* be in the nature of certiorari.

The State of North Carolina *shall* have a right of appeal to the North Carolina Historical Commission or any successor agency. Notice to the Historic Development Commission *shall* be served on the same day and in the same manner as for the North Carolina Historical Commission unless oral notice of appeal is given to the Historic Development Commission during the meeting at which the decision is rendered. The decision of the North Carolina Historical Commission *shall* be final and binding upon both *the state* and the Historic Development Commission.

State law reference: G.S. 160A-400.9(f)

(Ord. No. 1997-137-TC-153, §2, TC-18-96, 6-17-97)

e.

Jurisdiction.

i.

General.

The Historic Development Commission always has jurisdiction for certificates of appropriateness for the exterior of all *properties* (including *Historic Landmarks*) within the Historic Overlay District. The Historic Development Commission will also have jurisdiction for *Historic Landmarks* outside the Historic Overlay District and within Raleigh's zoning jurisdiction when there is no interlocal agreement with Wake County delegating such administration to the Wake County Historic Preservation Commission.

ii.

Interior.

The Wake County Historic Preservation Commission will have jurisdiction over all designated interior spaces, unless there is no interlocal agreement with Wake County delegating such administration to the Wake County Historic Preservation Commission.

f.

Expiration of certificate of appropriateness.

A certificate of appropriateness *shall* expire six (6) *months* after the date of issuance if the work authorized by the certificate has not been commenced. If after commencement the work is discontinued for a period of twelve (12) *months*, the permit therefor *shall* immediately expire. A certificate of appropriateness authorizing demolition *shall* expire if the work has not been commenced within six (6) *months* after the authorization date set by the Commission. If after commencement the demolition work is discontinued for a period of twelve (12) *months*, the approval therefor *shall* immediately expire.

No work authorized by any certificate that has expired *shall* thereafter be performed until a new certificate has been secured.

(Ord. No. 989-TC-291, §3, TC-12-87, 5-19-87)

(b)

Permitted Uses.

Subject to the provisions of [§10-2052](#) and other overlay districts, all general uses, conditional uses, and special uses - including *bed and breakfast inn* - allowed in the underlying zoning district by the **Schedule of Permitted Uses in Zoning Districts [§10-2071](#)** are allowed in the Historic Overlay District.

Annotation: *A-S-P Associates v. City of Raleigh*, 298 N.C. 207, 230, 258 S.E. 2d 244, 458 (1979). The requirement of G.S. 160A-382 that zoning regulations *shall* be uniform for each class of land or *building* throughout each district does not prohibit the creation of an Historic Overlay District which imposes additional regulations on some *property* within an underlying use district and not on all of the *property* within it.

(c)

Prohibited Uses.

Except for improvements made pursuant to Part 10 chapter 3 of this Code, any use not explicitly allowed in the **Schedule of Permitted Land Uses in Zoning Districts, [§10-2071](#)**, is prohibited in the Historic Overlay District and for *Historic Landmarks*. If a use is prohibited in either an overlay district or the underlying district, that use is prohibited even if one (1) of these districts allows the use. The enumeration of expressly prohibited uses *shall* not be deemed exclusive or all-inclusive. Prohibited uses include:

- All uses prohibited in the underlying district.
- The erection, alteration, restoration or moving of the *exterior features* of any *building* or structure (including walls, fences, light fixtures, steps, pavement, paths, or any other appurtenant features), trees, or above ground utility structure, or any type of *outdoor advertising sign* within a Historic Overlay District, or any *Historic Landmark*, or portion of the designated interior features of a *Historic Landmark*, without an approved certificate of appropriateness; provided, the activities listed in [§10-2052\(a\)\(2\)a.1.—3.](#), above, *maybe* undertaken without a certificate of appropriateness.
- The changing of the *exterior features* of any *building* or structure (including walls, fences, light fixtures, steps, pavement, paths, or any other appurtenant features), trees, or above ground utility structure, or any type of *outdoor advertising sign* within a Historic Overlay District, or any *Historic Landmark*, or portion of the designated interior features of a *Historic Landmark*, except in accordance with the terms, plans, conditions and provisions of an approved certificate of appropriateness.
- The demolition of any *building* or structure (including walls, fences, light fixtures, steps, pavement, paths, important landscape and natural features, or any other appurtenant features), trees, or above ground utility structure, or any type of *outdoor advertising sign* that has been recommended for designation by the Historic Development Commission as a *Historic Landmark* or is located within an area recommended as a Historic Overlay District, for a period up to one hundred eighty (180) days (unless the Commission votes to shorten it) or until the *City Council* takes final action, whichever occurs first.
- The demolition by neglect of the *exterior features* of any *building* or structure (including walls, fences, light fixtures, steps, pavement, paths, or any other appurtenant features), or any type of *outdoor advertising sign* within a Historic Overlay District, or any *Historic Landmark*, or portion of the designated interior features of a *Historic Landmark*.

Cross reference: Chapter 6, Article J, Demolition by Neglect of *Historic Landmarks* and Within Historic Overlay Districts.

- The demolition of any *building* or structure (including walls, fences, light fixtures, steps, pavement, paths, important landscape and natural features, or any other appurtenant features), trees, or above ground utility structure, or any type of *outdoor advertising sign* within a Historic Overlay District, or any *Historic Landmark*, without a certificate of appropriateness.

(d)

Area, Density, Bulk, Yard, and Height Requirements.

(1)

(3) **Area, density, and bulk.**

a.

The required minimum *net lot areas* for any *dwelling unit* and *equivalent dwelling unit* is that of the underlying zoning district.

b.

The maximum residential density per net acre is that of the underlying zoning district.

All minimum *net lot areas* and residential densities *shall* be calculated in accordance with [§10-2073\(c\)](#). All residential density and minimum *net lot area* requirements are subject to the exceptions listed in [§10-2073\(d\)](#).

(2)

(4) **Yard.**

The minimum and maximum yard setbacks within the Historic Overlay District, and for *Historic Landmarks*, *shall* be congruous with setbacks of typical well-related nearby *buildings* in the Overlay District, and congruous with the character of the *Historic Landmark*, as set forth in the development standards, subsection (e)(4).

If the yard setbacks of the underlying district conflict with these yard setbacks, the yard setbacks of the development standards *shall* control.

See [§10-2075](#) for other *yard areas* required by this Code, method of calculating, exceptions and reductions to *yard areas*, and illustrations.

(3)

(5) **Height.**

Buildings and structures *shall* be congruous with the height of well-related nearby *buildings* and structures in the Historic Overlay District. In general, this height is within ten (10) per cent of the height of these well-related *buildings* and structures. If the height regulations of the underlying district conflict with these height regulations, the height regulations of the Historic Overlay District *shall* control.

See [§10-2076](#) for method of height calculation, exceptions, and illustrations.

(e)

Supplementary Regulations.

All uses and activities of this Overlay District, and for *Historic Landmarks*, are also subject to Article H, other overlay zoning districts, conditional use zoning districts, and supplementary regulations of Article E. Supplementary regulations include:

(1)	Off-street parking
(2)	Landscaping

(3)

(6) **Signage.**

Signs in the Historic Overlay District and for *Historic Landmarks* are regulated by areas of special control, [§10-2083.1](#)(b)(2); no such *sign shall* be erected, altered, restored or moved except in compliance with a certificate of appropriateness.

(4)

(7) **Development standards.**

See documents entitled: "**Design Guidelines for Raleigh Historic Districts**," "**Guidelines for Exterior Rehabilitation for the Moore Square Historic District**," and "**The Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings**." Said documents are incorporated herein by reference as authorized by G.S. 160A-76 and are made a part of this Code and on file in the Planning Department. These documents contain architectural guidelines and design standards which *shall* be applied in consideration of applications for certificates of appropriateness, to insure insofar as possible that the *exterior features* of *buildings*, structures, and their appurtenant features located within an Historic Overlay District, and designated as a *Historic Landmark*, *shall* remain in harmony with other *buildings*, structures and appurtenant features in the District, and the character of the *Historic Landmark*. The current edition of "**The Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings**" *shall* be the sole standards and guidelines used in reviewing applications by *the State* of North Carolina for certificates of appropriateness.

The issuance of a certificate of appropriateness *shall* not be prohibited in situations where, owing to conditions especially affecting the structure, such as availability of materials and *lot* size but not affecting the Historic Overlay District or *Historic Landmarks* generally, compliance with the development standards would cause an unusual and unnecessary hardship on the *property owner* beyond what other *property owners* in the Historic Overlay District or of *Historic Landmarks* would meet.

Annotation: *A-S-P Associates v. Raleigh*, 298 N.C. 207, 222, 258 S.E. 2d 444, 454 (1979). Architectural guidelines and design standards contained in Raleigh ordinance for use by the Historic Development Commission in its administration of the ordinance do not constitute an impermissible delegation of legislative power.

(5)

(8) Effect of conflict with other ordinances.

Whenever any ordinance adopted pursuant to Part 3C, Article 19, Chapter 160A of the General Statutes requires a longer waiting period or imposes other higher standards with respect to a designated *historic landmark* or designated Historic Overlay District than are established under any other statute, charter provision, or regulation, Part 3C *shall* govern. Whenever the provisions of any other statute, charter provision, ordinance, or regulation require a longer waiting period or impose other higher standards than are established under general statute such other statute, charter provision, ordinance, or regulation *shall* govern.

(Ord. No. 2001-26-TC-208, §2, TC-5-01, 6-19-01; Ord. No. 2003-373-TC-231, §4, TC-23-02, 2-4-03)

(f)**Designation, amendment, and repeal of historic districts.**

Historic Overlay Districts, as provided for in this section, *may* from time to time be designated, amended or repealed through the *following* procedure:

(1)

(9) An investigation and report describing the significance of the *buildings*, structures, features, sites or surroundings included in any proposed Historic Overlay District and a description of the boundaries of such Overlay District, changes in boundaries, or de-designation due to loss of significance, *shall* be prepared and/or reviewed by the Raleigh Historic Development Commission, and its recommendation *shall* be forwarded to the *City Council*. The *Council shall* refer such report to the North Carolina Department of Cultural Resources.

(2)

(10) The Department of Cultural Resources, acting through an agent or employee designated by its Secretary, *shall* have made an analysis of and recommendations concerning such report and description of proposed boundaries. Failure by the Department to submit its *written* analysis and recommendations to the *City* of Raleigh within thirty (30) calendar days after a *written* request for such analysis has been received by the Department *shall* relieve the *City* of any responsibility for awaiting such analysis, and the *City may* at any time thereafter take any necessary action to adopt or amend its zoning ordinance.

(3)

(11) The *City Council may* also, in its discretion, refer the report and proposed boundaries to any other interested body for its recommendations prior to taking action to amend the zoning ordinance.

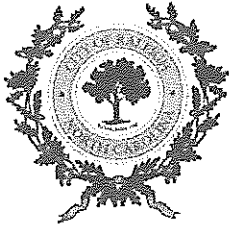
(4)

(12) The recommendation(s) *shall* thereupon be treated in the same manner as any request for a change in the *City's* zoning ordinance and *shall* be processed according to the procedures set forth in §10-2165.

(5)

(13) With respect to any changes in the boundaries of an adopted Historic Overlay District subsequent to its initial establishment, an investigative study and report describing such changes, and reasons therefor, *shall* be processed according to subsections (f)(1) through (f)(4) above.

State law reference: Chapter 160A, Article 19, Part 3C of North Carolina General Statutes.



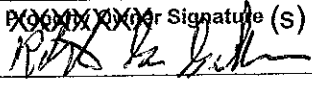
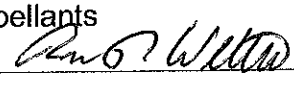
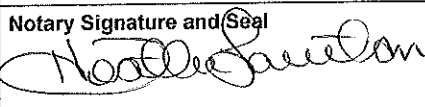
Planning & Development

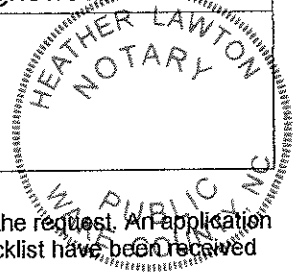
**Development Services
Customer Service Center**
One Exchange Plaza
1 Exchange Plaza, Suite 400
Raleigh, North Carolina 27601
Phone 919-996-2495
Fax 919-516-2685

Appeal of Administrative Decision Application

		OFFICE USE ONLY
Nature of appeal (Submit addendum on separate sheet, if more space is needed) The grounds for this appeal are multiple. Mr. Pearce failed to interview all the parties involved in this action (Bob Gillen and Robert Willett were ignored). Hearsay evidence (Jake Brantley) was used over first person evidence (Tully, Gillen, and Willett) for his assessment, and he ignored and failed to respond to a companion complaint from one of the aggrieved parties involved (Robert Willett). Of the 4 issues, (1) gravel, (2) exposed concrete, (3) 4-inch PVC pipe, and [see addendum]		Transaction Number
Provide all previous transaction numbers for Coordinated Team Reviews, Due Diligence Sessions or Pre-Submittal Conferences. If this property was the subject of a previous Board action, provide the case number.		

GENERAL INFORMATION

Property Address 0 E. Lane Street (an alley)		Date August 21, 2015	
Property PIN 1704902245	Current Zoning R-10		
Nearest Intersection N. East St. and E. Lane St.		Property size (in acres) 0.02	
Property Owner Appellant Robert G. Gillen & Robert T. Willett		Phone 919-856-0210	Fax
		Email chiller919@aol.com	
Project Contact Person Robert G. Gillen & Robert T. Willett		Phone 919-856-0210	Fax
		Email chiller919@aol.com; rwillett@newsobserver.com	
Property Owner Signature (s) Appellants  		Email chiller919@aol.com; & rwillett@newsobserver.com	
Notary Sworn and subscribed before me this <u>21</u> day of <u>August</u> , 20 <u>15</u>		Notary Signature and Seal  expires: <u>August 4, 2018</u>	

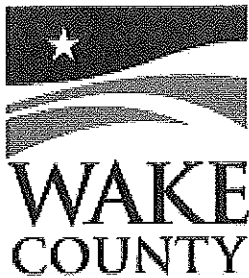


It is improper to contact any member of the Board of Adjustment prior to the disposition of a case to discuss the request. An application will not be considered complete until all required submittal components listed on the Appeal of Decision Checklist have been received and approved.

Addendum to "Nature of Appeal" block:
0 E. Lane Street (an alley)
Robert G. Gillen & Robert T. Willett

... (4) presence of two manhole covers.

The officer failed to make an investigation into the cause of the "ruts that form over time" and of "gravel loss through erosion". If he had, he would have discovered that the deep ruts were formed from use of the alley by heavy equipment owned by the Scott's for their landscaping business, and not "over time". He would have discovered that gravel loss through erosion would not have occurred if the Scott's had not removed a retention wall and graded the large area between their house and their barn allowing water to drain down the alley, and the erosion would not have occurred to the extent seen if they had also not inserted a PVC pipe under the ground, which protruded into the alley and discharged water into the alley during rainstorms precipitating deepening ruts and new ruts. The further consequence of this erosion and rutting was the exposure of deep tree roots that helped hold the soil together and maintained the integrity of the alley. Finally, the now exposed concrete (from the scouring provided by the gravel as it washed down) and the two manhole covers (one at the top and one at the bottom of the alley) are evidence of a large sanitary sewer, which could be seriously impacted with a disruption to vital city services if this destruction to the alley is allowed to continue. The Gillen's and Willett's have lived beside this alley for 35 and 17 years respectively. We believe that we are better able to judge between "routine maintenance" which we have performed over those ensuing years, and a **"change in: i. Design; ii. Material, iii. Color; or iv. Outer appearance", UDO § 5.4.1.C.3** that has transpired in the almost 3 years that the Scott's have been here. Please see pages 4 and 5 of the letter of May 29, 2015 submitted by Robert Gillen to Mr. Pearce requesting a review of the "assessment" stated by the Raleigh Historic Development Commission (Ms. Tully), which gives additional reasons for this appeal to the Board of Adjustment.


[Home](#)

Wake County Real Estate Data Account Summary

[iMaps](#)
[Tax Bills](#)
Real Estate ID **0428161** PIN # **1704902245**
[Account Search](#)
Location Address
0 E LANE STProperty Description
10 FT ALLEY FOR INGRESS/EGRESS
[Pin/Parcel History](#) [Search Results](#) [New Search](#)
[NORTH CAROLINA](#) [Account](#) | [Buildings](#) | [Land](#) | [Deeds](#) | [Notes](#) | [Sales](#) | [Photos](#) | [Tax Bill](#) | [Map](#)

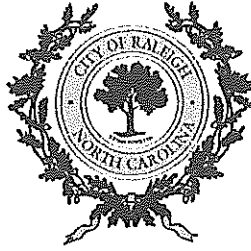
For real estate accounts created or new construction built after January 1, 2015: Property values are under review for tax year 2016. Land and building values on these properties will reflect an assessment based on the January 1, 2008 Schedule of Values until late 2015 or early 2016 at which time the January 1, 2016 revaluation values for both land and buildings will be available.

Property Owner SCOTT, RANDALL CRAIG & HEATHER LEE (Use the Deeds link to view any additional owners)		Owner's Mailing Address 218 N EAST ST RALEIGH NC 27601-1114	Property Location Address 0 E LANE ST RALEIGH NC 27601-
Administrative Data Old Map # G001-- Map/Scale 1704 20 VCS 01RA558 City RALEIGH Fire District Township RALEIGH Land Class R-<10-HS ETJ Spec Dist(s) Zoning History ID 1 History ID 2 Acreage .02 Permit Date Permit #		Transfer Information Deed Date 4/6/2015 Book & Page 15971 1949 Revenue Stamps 5.00 Pkg Sale Date Pkg Sale Price Land Sale Date 4/6/2015 Land Sale Price \$2,500 Improvement Summary Total Units 0 Recycle Units 0 Apt/SC Sqft Heated Area	Assessed Value Land Value Assessed Bldg. Value Assessed Tax Relief Land Use Value Use Value Deferment Historic Deferment Total Deferred Value *Property Data Under Review Use/Hist/Tax Relief Assessed Total Value Assessed*

*Wake County assessed building and land values reflect the market value as of January 1, 2008, which is the date of the last county-wide revaluation. Any inflation, deflation or other economic changes occurring after this date does not affect the assessed value of the property and cannot be lawfully considered when reviewing the value for adjustment.

The January 1, 2008 values will remain in effect until the next county-wide revaluation, which begins January 1, 2016. Until that time, any real estate accounts created or new construction built is assessed according to the 2008 Schedule of Values.

For questions regarding the information displayed on this site, please contact the Revenue Department at RevHelp@wakegov.com or call 919-856-5400.



The City of Raleigh

NORTH CAROLINA

July 17, 2015

Mr. Robert G. Gillen
Mrs. Lee Ann F. Gillen
220 North East Street
Raleigh, N.C. 27601

Re: Zoning complaint

Dear Mr. and Mrs. Gillen:

I have carefully considered your zoning complaint concerning the application of gravel to the alley that is appurtenant to 218, 220 and 224 N. East Street and 512 E. Lane Street (hereafter described as "the alley"). Your concerns stem from the addition of gravel to the alley that occurred in 2013 and continued periodically thereafter. Your letter indicates that significant erosion occurred within the alley on a particular morning and that Mr. Scott applied gravel to address the issue. He did not obtain a certificate of appropriateness prior to applying the gravel.

Tania Tully, a Preservation Planner with the City's Planning Department, investigated these concerns and accepted information from all involved parties. Ms. Tully determined that the actions complained of constituted "ordinary maintenance or repair," and that no certificate of appropriateness was required.

You disagree with Ms. Tully's determination and have asked for a final determination from me whether the additional of gravel to the alley without a certificate of appropriateness constitutes a zoning violation. It is my determination that the addition of gravel to the alley does not constitute a zoning violation.

In reaching this decision, I considered relevant zoning regulations and evidence related to those regulations. Parties may have private rights and responsibilities related to an easement. *Please note that my determination relates only to zoning requirements and not to any private rights or responsibilities of any party who may have an interest or easement in the alley.*

Information About the Alley. The alley at issue was created by deed in the early 1900s. Real property instruments reflect the alley's dimensions as 105 feet long and 10 feet wide. The alley

I also considered information from the prior owners of 218 N. East Street. Ms. Annie Barbour owned 218 N. East Street for many years prior to the Scotts' purchase of it and her heirs sold the property after her death. Christopher J. (Jake) Brantley is Ms. Barbour's son and was one of the owners of 218 N. East Street after his mother's death. He provided the following relevant information by e-mail to the Scotts and copied Ms. Tully:

Hello Randy & Heather,

Sorry to take so long getting back to you, but it's been a busy week. I rode by today (Friday) to see how bad the driveway was and was relieved to see it was not that bad. I have seen it worse over the years.

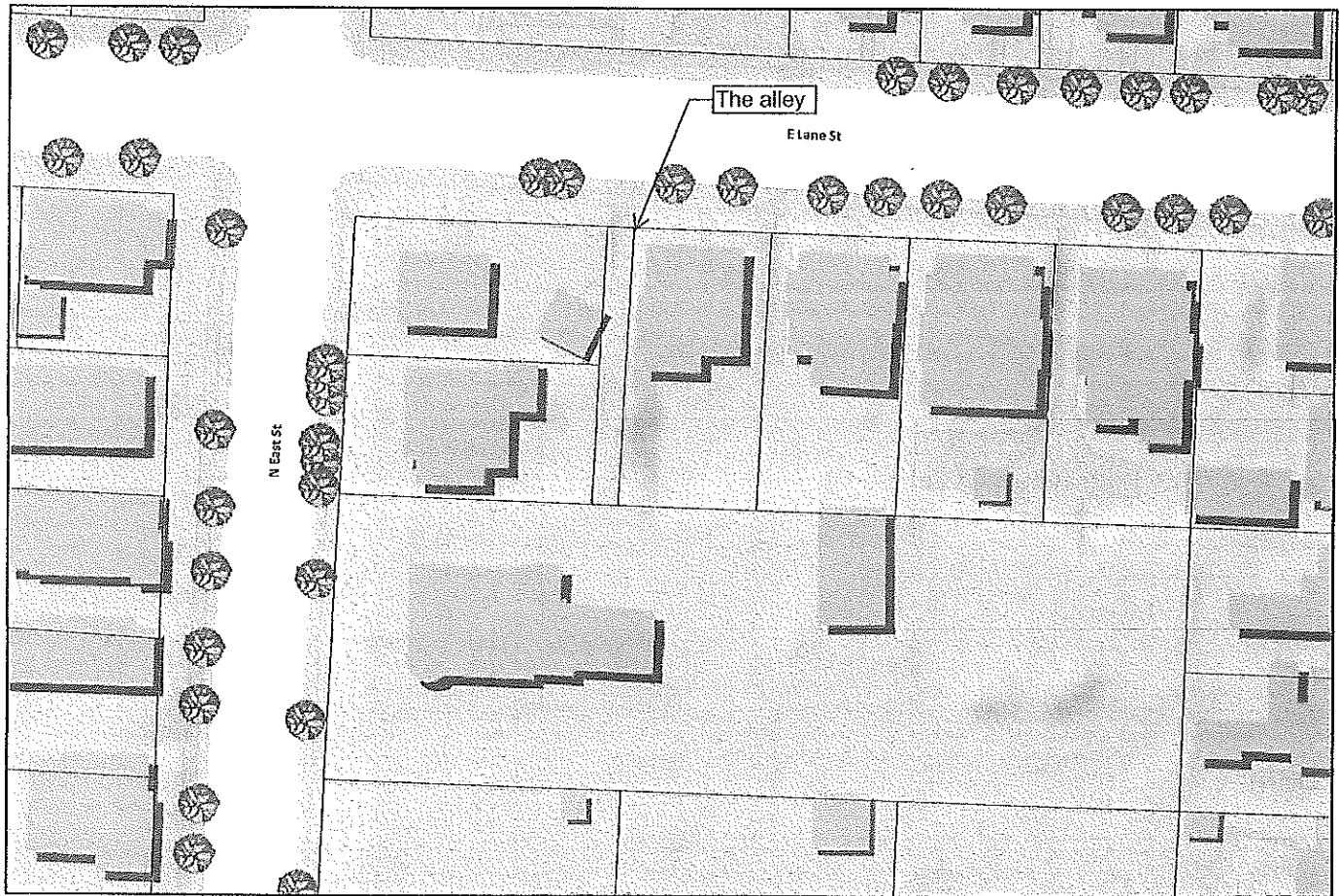
First, you need to fill the bigger holes with crush and run (or screenings) and start carefully driving up and down on it to pack it down. Once it is packed down, you can put more where you need it. I always needed more around the manhole cover near the top and this helps keep the water from washing out the driveway as much, except in very heavy rains. As you have seen, nothing stops it when you have a deluge, but it is manageable if you don't let it get too bad. Regular maintenance will keep it easily drivable.

We got crush and run or screenings at the Wake Stone quarry in Knightdale, on Hwy 64 Business. They sold us a pickup load for about 15 dollars.

To whom it may concern;

My name is Christopher J Brantley and I am a former owner of the property that is now owned by Randy & Heather Scott. My siblings and I, and before that my mother, have owned the property at 218 N. East St. since 1973. We have maintained the alleyway connecting to E. Lane St. since its purchase, putting dozens of pickup truck loads of crush and run down over the years. The only time we had any real problems was when we had very heavy rainfall, as we have had this year. Even then, the alleyway was manageable, we just had to put down a little more crush and run than usual. We never had any problems or issues from the city or the neighbors, and there was never any question that we, and the two neighbors, were allowed free access.

Erosion has caused rutting in the alley. I visited the site and confirmed that the alley slopes steeply from E. Lane Street up to 218 N. East, which is consistent with information you provided that the alley's average grade is 18%. The parties agree, and the evidence indicates that in 2013 the Scotts added gravel to the alley to repair damage to the alley caused by erosion. Gravel was added on top of existing gravel, including existing gravel into which grass and weeds had grown. Gravel was placed to fill areas within the alley where existing gravel had been washed away. The new gravel was smoothed so that ruts, erosion, and any other damage to its surface was resolved. Unfortunately, erosion continued after this repair. Periodically, the Scotts have moved gravel that has washed into the street or the driveway apron back into the alley. No other materials of any kind were added to the alley other than gravel.



Alley Location

Exhibit A



0 25 50 100 Feet
1 inch = 50 feet

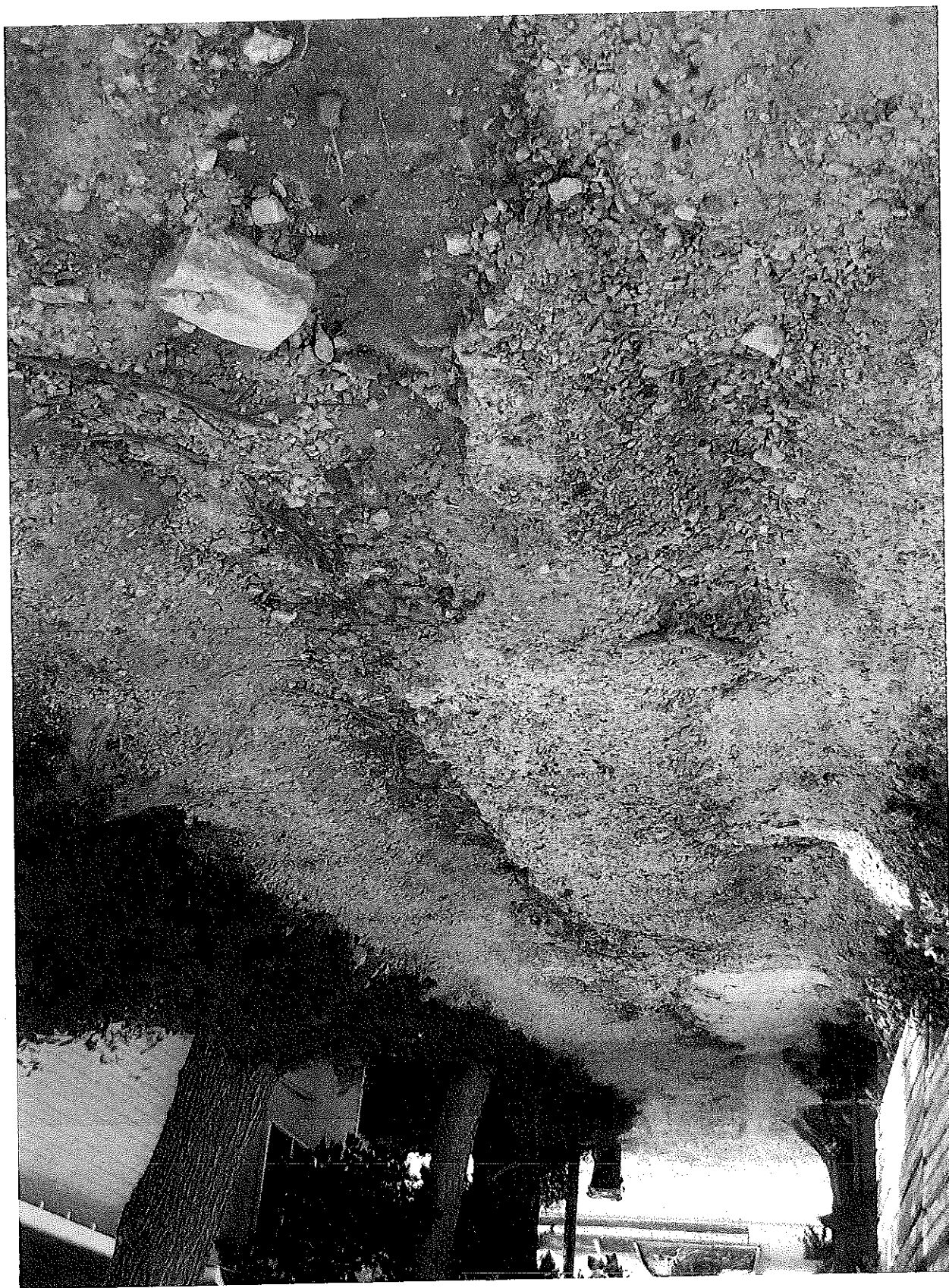
Disclaimer
Maps makes every effort to produce and publish the most current and accurate information possible. However, the maps are produced for information purposes, and are NOT surveys. No warranties, expressed or implied, are provided for the data therein, its use, or its interpretation.

SITE
PLAN:
IMAGES
OF
ALLEY
THRU
TIME



June 28, 2012

August 16, 2014



SITE
PLAN:
IMAGES
OF
ALLEY
THRU
TIME



August 24, 2008



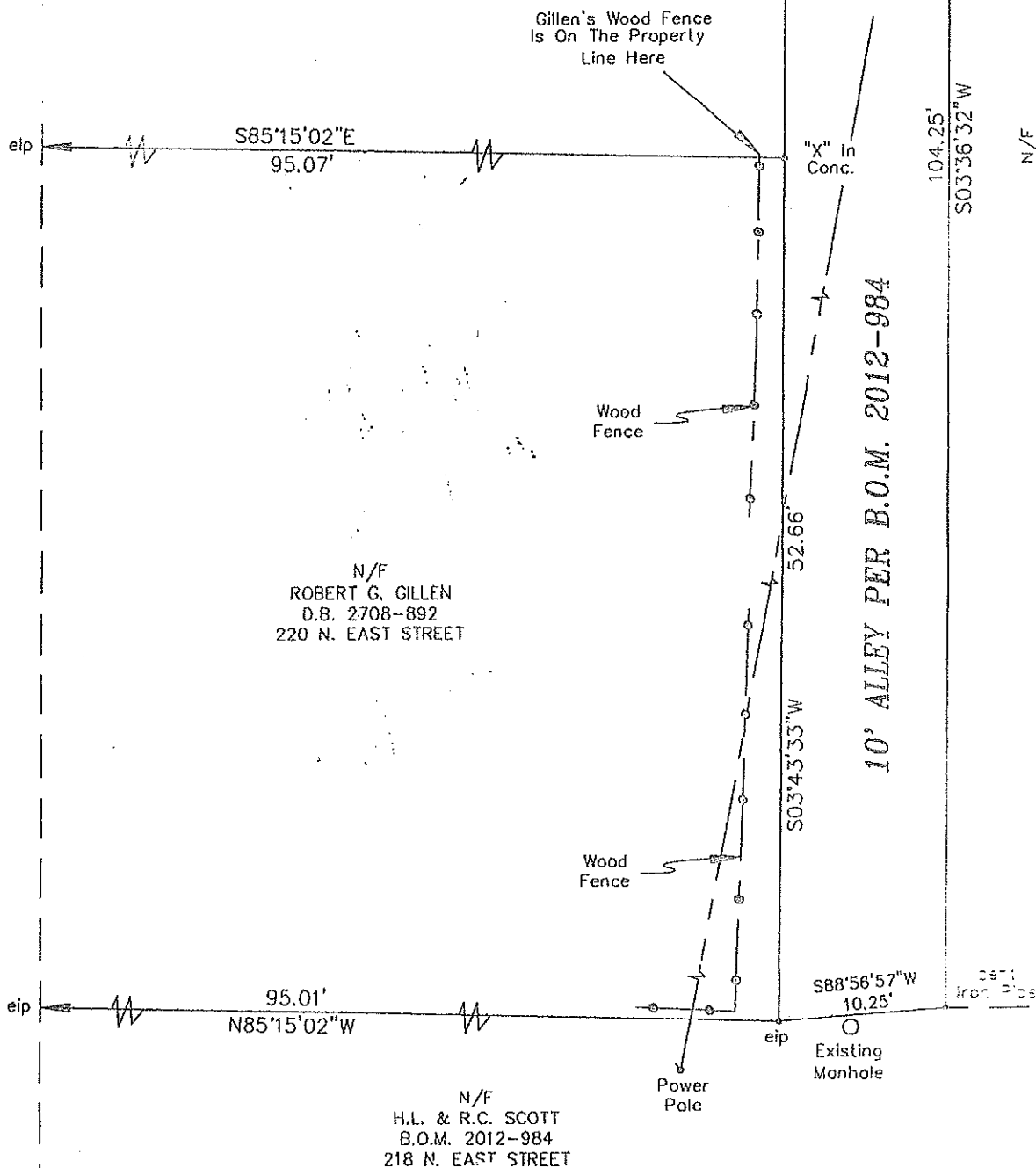
June 28, 2012

See what bearing
was not 180°
on the ground
as recorded in
a Red Book

Notes on Drainage
Were Not Located

N. EAST STREET

B. Pg. 892



SCALE

10'

20'

er, certify that this map is
the buildings lie wholly on
are no other visible
encroachments to my knowledge,
shown.

Surveyor L-3916

SURVEY OF EXISTING 10' ALLEY ONLY AND WOOD FENCE
(MAP SHOWS EXISTING PROPERTY CORNERS, NO ADJUSTMENTS WERE MADE)

ROBERT G. GILLEN
LEE ANN F. GILLEN

220 N. EAST STREET

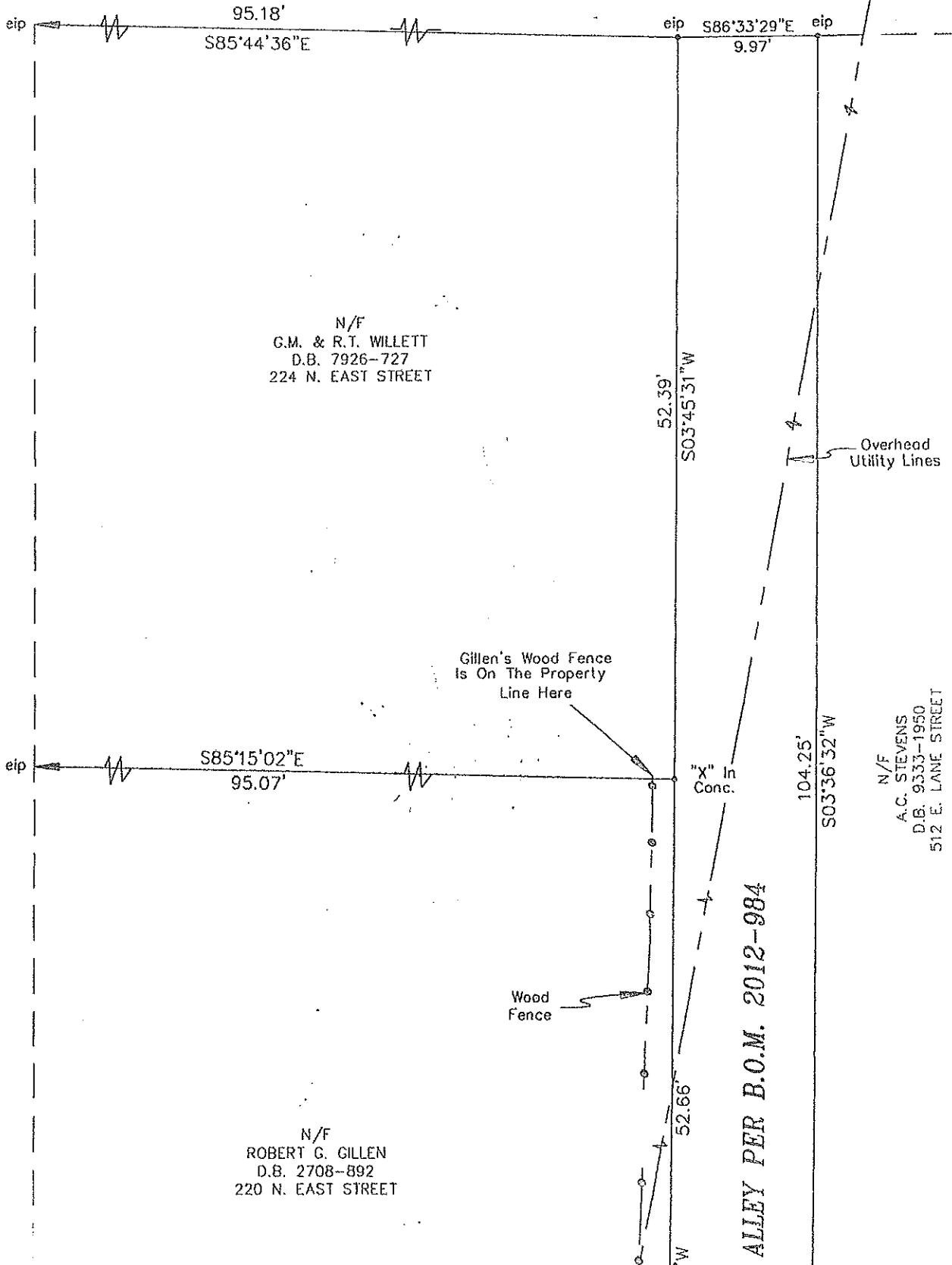
RALEIGH, N.C.

Date:

11-12-14

James W. Nipper, Professional Land Surveyor

E. LANE STREET



Does Without
 See North Carolina
 Does No Liability
 or As Easements
 as Revealed By A
 Real Estate
 Lines or Drainage
 Were Not Located

N. EAST STREET

ALLEY PER B.O.M. 2012-984